

E-RATE CENTRAL

MEMO

E-Rate Central/CentralEd
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Tel: 516-832-2887 • Fax: 516-832-2877

Anthony D. White Jr.

June 19, 2009

Received & Inspected
JUN 23 2009
FCC Mail Room

Federal Communications Commission
Office of the Secretary
445 12th Street, S.W.
Washington, DC 20554

Re: Appeal of a Decision of the Universal
Service Administrator, CC Docket No. 02-6

Applicant Name:	Cardinal Hayes High School
Entity Number:	10416
Funding Year:	2005
Form 471 Application:	483059
FRN(s):	1343892, 1343928, 1345393, 1345437 and 1346877.

This is an appeal to rescind *Demand Payment Letters* issued by Universal Service Administrative Company (USAC) requiring Cardinal Hayes High School to repay the agency funding distributed under five FRNs that total \$176,431.84. An SLD review during funding year 2005 found that the school could not provide a technology plan approval letter for the existing technology plan. This decision was appealed directly to USAC and subsequently denied.

BACKGROUND

Cardinal Hayes High School is a highly respected Catholic high school in one of the poorest sections of the South Bronx, in New York City. While its student body is economically poor, the school has an impressive record of achievement in the area of student performance outcomes. More than 95% of their graduates go on to college. The school's success is often touted on the national level.

The 67 year old building is in excellent condition and the school has a recognized successful track record of using technology to improve teaching and learning. The school makes thoughtful use of all previous and current E-rate funding for developing an effective Internet network. The technology environment at the school now includes both fiber and category 5 wiring connecting more than 300 computers for the use of 1100 students and teachers. Every classroom is wired and there are 5 computer labs. The student to computer ratio is 1:3.3, well above the average for similar size schools. A visit to the school and a review of its technology clearly indicates that an effective technology vision and plan are driving the effort.

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Cardinal Hayes High School is a model school that exemplifies the true purpose of the E-rate Program. The school serves students from the poorest socio-economic backgrounds, has been recognized for its effective use of educational technology, and demonstrates academic excellence. E-rate discounts have enabled the school to create a first class technology environment for its students.

During an SLD audit, the technology plan approval letter was requested but could not be located. The school had recently undergone a major administrative turnover. Key people left and records, being moved, were lost or accidentally destroyed, including the technology plan approval letter from the New York State Education Department. The school immediately contacted the NYSED requesting a copy of the approval letter but learned that copies were not kept by the department. However, based upon submission lists and past performance, the director involved did conclude that a technology plan was submitted by the school and there was no indication that it did not meet the minimum requirements and was approved.

Unfortunately this recordkeeping snafu resulted in a USAC/SLD request for the repayment of all funding in FY 2005 to a total of more than \$176,000. An appeal was written to USAC on the matter but subsequently denied and COMADS have now been issued. This decision does not acknowledge all of the available evidence, is not proportionate to the procedural infraction, and will have a serious detrimental effect on this institution and the neediest of students that it services.

DISCUSSION

We do not dispute that the New York State issued technology plan approval letter for the period under examination was lost during a major staffing reorganization that took place at the school. However, we believe that there is significant evidence to show that the school had an appropriate plan that was submitted and approved by New York State. Please consider the following:

1. Cardinal Hayes has had a well developed school technology plan from the very beginning of the E-rate program and had a current plan available that was submitted to SLD examiners at the time of the audit. The existence of the plan was never in question.
2. Written proof (emails, agendas, etc.) that a school technology planning committee existed and participated in the development of the technology plan was submitted to the SLD under the appeal.
3. The level and sophistication of technology deployment at the school is clearly proof of well thought out planning.
4. The New York State Education Department admits that it did not keep copies of the technology plan approval letters they issued, but their available records indicated that the Cardinal Hayes plan was submitted and approved. It existed during the audit, it was well

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written, and there were no reasons not to seek approval. The State administrator simply could not produce a copy of the approval letter since they did not (at the time) routinely maintaining copies. The State Education Department has since established a policy and practice of maintaining copies of these documents.

Acknowledging the importance of good record keeping both the school and the State Education Department has taken steps to ensure the safe maintenance of E-rate related documents.

However, it is clear that the school had a good technology plan, used the funding appropriately, and there is reasonable understanding by the approving agency that the plan was submitted and approved.

CONCLUSION

Requiring Cardinal Hayes High School to repay more than \$176,000 in technology funding is a punishment that simply does not fit the offense. There was no misuse of funds, the funds were used appropriately and effectively, and the technology plan in question existed at the time of the audit. Had the approving agency maintained copies of their own letters, the matter would have been resolved. However, to equate a recordkeeping snafu with a misuse of funding is contrary to the enlightened Bishop Perry decision and the true spirit of the E-rate program. A demand for repayment of these funds would do significant harm to Cardinal Hayes High School and the students it serves. We respectfully ask the FCC to overturn the decision of USAC in this matter.

c. USAC

Attachments

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EXHIBIT # 1



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, N.Y. 12230

February 11, 1998

Msgr. John Graham
Cardinal Hayes High School
650 Grand Concourse
Bronx, New York 10451

**Re: Certification of Technology Plan Review/Approval
(Pursuant to the requirements of the FCC Universal Service Fund Discount
Program for Schools and Libraries)**

Dear Mr. Graham:

Thank you for providing a copy of your institution's technology plan for review pursuant to the requirements of the Federal Communications Commission (FCC) Universal Service Fund for seeking approval for discounts on telecommunications services and equipment.

The technology planning information you provided appears to be consistent with the guidelines and criteria currently available from the FCC regarding documentation of sufficient planning effort and commitment to continued enhancement of your institution's technology infrastructure. You should consider receipt of this letter as authorization for confirming review and approval of your technology plan by an appropriate independent entity, as required by the FCC. This certification applies only to approval of this technology planning documentation for purposes of application to the Universal Service Discount Fund.

Best wishes for successful approval of your application for discounts on telecommunications services and equipment.

Sincerely,

A handwritten signature in dark ink, appearing to read "Charles C. DeVoe". The signature is fluid and cursive.

Charles C. DeVoe

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EXHIBIT # 2

To: Fr. James Byrnes Louis DiGiorno
William Catucci Virginia McEvoy
Julio Cotto Joseph Ryan

From: Thomas A. Bradley 

Date: May 15, 2002

Subject: Technology / E-Rate Funding Committee
May 15, 2002 Meeting Minutes

Present: Thomas Bradley

Absent: Everybody Else

The May 2, 2002 minutes indicated that we would have future meetings on Wednesdays during 2nd period (9:30-10:00AM). In the last paragraph I scheduled today for our next meeting.

Although the minutes did not specify the meeting place as the Msgr. Monahan Conference Room, I assumed all would expect the location to be the same as at the May 2 meeting.

I won't assume anymore! Also, no one called to say he /she could not attend!

Our next meeting will be Wednesday, May 29, 2002, between 9:30-10:00AM, in the Msgr. Monahan Conference Room on the 4th floor. An agenda will be put in your mailbox on Tuesday, May 28.

Cc: Msgr. John Graham

To: Fr. James Byrnes
William Catucci
Julio Cotto
Louis DiGiorno
Virginia McEvoy
Joseph Ryan

From: Thomas A. Bradley *TAB*

Date: May 7, 2002

Subject: Technology / E-Rate Funding Committee
May 2, 2002 Meeting Minutes

Present: Thomas Bradley
William Catucci
Julio Cotto
Joseph Ryan

Absent: Fr. James Byrnes
Louis DiGiorno (Class)
Virginia McEvoy (Class)

Minutes:

- Future meetings will be held on Wednesdays during 2nd period (9:30-10:00AM).
- E-Rate Funding –
 - Discussed - -
 - Background of CH participation.
 - Defining services CH wants and needs, and is eligible to request.
 - Identification and selection of providers.
 - Decided an outside consultant was not needed at the present time.
- Technology (non E-Rate) –
 - Discussed increasing commitment to - -
 - Training faculty and staff.
 - After school programs with students.
 - Selecting precise course software.
 - Exploring successful outside educational models and programs.


- Expanded use of classroom projectors.
- Recommendations will depend on funds availability.

The next meeting is scheduled for Wednesday, May 15. We will concentrate on E-Rate Funding. To that end I have attached the following reference documents for your review:

- Eligible Services Framework.
- What's New.

Cc: Msgr. John Graham

To: Fr. James Byrnes
William Catucci
Julio Cotto
Louis DiGiorno
Virginia McEvoy
Joseph Ryan

From: Thomas A. Bradley 

Date: May 29, 2002

Subject: Technology / E-Rate Funding Committee
May 29, 2002 Meeting Minutes

Present: Thomas Bradley
William Catucci
Julio Cotto
Louis DiGiorno

Absent: Fr. James Byrnes
Virginia McEvoy
Joseph Ryan

CHHS technology needs were discussed as to eligible E-Rate funding. We seem to have all the bases covered.

The subject of a "New Media" program came up and was discussed at length in terms of adding to the school's curriculum, potential increase in the number of students, staffing, facilities, equipment, etc.

Messrs. Catucci, Cotto and DiGiorno will draft a program outline and requirements for distribution prior to our next meeting.

Our next meeting will be Wednesday, June 19, 2002, at 10AM in the Msgr. Monahan Conference Room.

Cc. Msgr. John Graham

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EXHIBIT # 3



OFFICE OF CURRICULUM AND INSTRUCTIONAL SUPPORT
CAREER AND TECHNICAL EDUCATION TEAM
89 WASHINGTON AVE., ROOM 315 EB
ALBANY, NEW YORK 12234
(518) 486-1547; FAX: (518) 402-5114
[HTTP://WWW.EMSC.NYSED.GOV/CTE](http://www.emsc.ny.gov/cte)

August 2, 2007

Mr. Frank Mosco
Director of Technology and Media
Cardinal Hayes High School
650 Grand Concourse
Bronx, NY 10451

Dear Mr. Mosco:

This letter is in response to your recent request concerning a Tech Plan Approval letter for your school dating back to 1998. Unfortunately, we no longer have files dating back to that period. We have had some reorganization within our Department in that timeframe. The people who were involved in this process have retired and the Department does not keep documents on file beyond 7 years.

New York State Education Department has contracted E-Rate Central to perform technology plan review and approval for non-public schools and Charter schools in New York State. Prior to E-Rate Central assuming this responsibility, New York State forwarded documentation to them regarding Tech Plans previously reviewed and approved consisting of a list of schools and a sample of the letter that had been sent. Although we do not have the actual letter, this convinces us that Cardinal Hayes DID have an approved Tech Plan in 1998. I'm convinced that there is clear evidence that you were in compliance with the E-Rate Program requirement. I hope this letter will clarify the issue with USAC auditing staff and get the inquiry satisfactorily addressed. Should there be additional request for clarification, please do not hesitate to contact me.

Sincerely,

Teh-yuan Wan, Ph.D.
State E-Rate Program Coordinator

cc: Christine C. Hoyler
E-Rate Central